

REFERENCE TITLE: law enforcement; safety equipment; appropriation

State of Arizona  
Senate  
Forty-eighth Legislature  
Second Regular Session  
2008

## **SB 1140**

Introduced by  
Senator Waring

### AN ACT

AMENDING SECTIONS 5-395.01, 5-396, 5-397 AND 28-1381, ARIZONA REVISED STATUTES; AMENDING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 219, SECTION 2; REPEALING SECTION 28-1382, ARIZONA REVISED STATUTES, AS AMENDED BY LAWS 2007, CHAPTER 195, SECTION 3; AMENDING SECTIONS 28-1383, 28-8284, 28-8286, 28-8287 AND 28-8288, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1722; MAKING AN APPROPRIATION; RELATING TO LAW ENFORCEMENT SAFETY EQUIPMENT.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 5-395.01, Arizona Revised Statutes, is amended to  
3 read:

4 5-395.01. Operating or in actual physical control of a  
5 motorized watercraft while intoxicated:  
6 classification; penalties

7 A. A person who is convicted of a violation of section 5-395 is guilty  
8 of a class 1 misdemeanor. The person shall pay a fine of not less than two  
9 hundred fifty dollars. In addition to any other penalties under this  
10 section, the judge shall order the person to complete alcohol or other drug  
11 screening that is provided by a facility approved by the department of health  
12 services or a probation department. If a judge determines that the person  
13 requires further alcohol or other drug education or treatment, the person may  
14 be required pursuant to court order to obtain alcohol or other drug education  
15 or treatment under the court's supervision from an approved facility. The  
16 judge may review an education or treatment determination at the request of  
17 the state or the defendant or on the judge's initiative. The person shall  
18 pay the costs of the screening, education or treatment unless the court  
19 waives part or all of the costs.

20 B. Except as provided in section 5-398.01, the court may suspend any  
21 imposed sentence for a first violation of section 5-395 if the person  
22 completes a court ordered alcohol or other drug screening, education or  
23 treatment program. If the person fails to complete the court ordered alcohol  
24 or other drug screening, education or treatment program and has not been  
25 placed on probation, the court shall issue an order to show cause to the  
26 defendant as to why the remaining jail sentence should not be served.

27 C. A court may order a person sentenced pursuant to this section to  
28 perform community restitution.

29 D. Notwithstanding subsection B of this section, if within a period of  
30 sixty months a person is convicted of a second violation of section 5-395 or  
31 is convicted of a violation of section 5-395 and has previously been  
32 convicted of an act in another state that if committed in this state would be  
33 a violation of section 5-395, the person shall be sentenced to serve not less  
34 than ninety days in jail, thirty days of which shall be served consecutively,  
35 and the person is not eligible for probation or suspension of execution of  
36 sentence unless the entire sentence has been served, except that the judge  
37 may suspend at the time of sentencing all but thirty days of the sentence if  
38 the person completes a court ordered alcohol or other drug screening,  
39 education or treatment program. If the person fails to complete the court  
40 ordered alcohol or other drug screening, education or treatment program and  
41 has not been placed on probation, the court shall issue an order to show  
42 cause as to why the remaining jail sentence should not be served. The judge  
43 shall order the person to pay a fine of not less than five hundred dollars.

44 E. The dates of the commission of the offense are the determining  
45 factor in applying the sixty month provision of subsection D of this section,

1 irrespective of the sequence in which the offenses were committed. A second  
2 violation for which a conviction occurs as provided in this section shall not  
3 include a conviction for an offense arising out of the same series of acts.

4 F. If a person is referred to a screening or treatment facility, that  
5 facility shall report to the court whether the person has successfully  
6 completed the screening, education or treatment program.

7 G. Any political subdivision processing or utilizing the services of a  
8 person ordered to perform community restitution pursuant to this section does  
9 not incur any civil liability to the person ordered to perform community  
10 restitution as a result of these activities unless the political subdivision  
11 or its agent or employee acts with gross negligence.

12 H. After a person who is sentenced pursuant to subsection B of this  
13 section has served twenty-four consecutive hours in jail or after a person  
14 who is sentenced pursuant to subsection D of this section has served  
15 forty-eight consecutive hours in jail and after receiving confirmation that  
16 the person is employed or is a student, the court, on pronouncement of any  
17 jail sentence under this section, may provide in the sentence that the person  
18 may be permitted, if the person is employed or is a student and can continue  
19 the person's employment or studies, to continue such employment or studies  
20 for not more than twelve hours per day nor more than five days per week, and  
21 the remaining day, days or parts of days shall be spent in jail until the  
22 sentence is served. The person shall be allowed out of jail only long enough  
23 to complete the actual hours of employment or studies and no longer.

24 I. A person who is sentenced pursuant to this section is eligible for  
25 a home detention program pursuant to the provisions of section 9-499.07,  
26 subsections M through R or section 11-459, subsections L through Q.

27 J. The court shall allow the allegation of a prior conviction or other  
28 pending charge of a violation of section 5-395 filed twenty or more days  
29 before the date the case is actually tried and may allow the allegation of a  
30 prior conviction or other pending charge of a violation of section 5-395  
31 filed any time before the date the case is actually tried, provided that when  
32 the allegation is filed this state must make available to the defendant a  
33 copy of any information obtained concerning the prior conviction or other  
34 pending charge. Any conviction may be used to enhance another conviction  
35 irrespective of the dates on which the offenses occurred within the sixty  
36 month provision.

37 K. If a person is placed on probation for violating section 5-395, the  
38 probation shall be supervised unless the court finds that supervised  
39 probation is not necessary or the court does not have supervisory probation  
40 services.

41 L. Persons who are convicted pursuant to section 5-395 shall pay an  
42 additional assessment of five hundred dollars or, if the person is convicted  
43 of a second violation pursuant to subsection D of this section, shall pay an  
44 additional assessment of one thousand two hundred fifty dollars to be  
45 deposited by the state treasurer in the prison construction and operations

1 fund established by section 41-1651. These assessments are not subject to  
 2 any surcharge. If the conviction occurred in the superior court or a justice  
 3 court, the court shall transmit the assessed monies to the county treasurer.  
 4 If the conviction occurred in a municipal court, the court shall transmit the  
 5 assessed monies to the city treasurer. The city or county treasurer shall  
 6 transmit the monies received to the state treasurer.

7 M. Persons convicted pursuant to section 5-395 shall pay an additional  
 8 assessment of five hundred dollars or for a second violation pursuant to  
 9 subsection D of this section shall pay an additional assessment of one  
 10 thousand two hundred fifty dollars to be deposited by the state treasurer in  
 11 the ~~state general fund~~ PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION  
 12 41-1722. These assessments are not subject to any surcharge. If the  
 13 conviction occurred in the superior court or a justice court, the court shall  
 14 transmit the assessed monies to the county treasurer. If the conviction  
 15 occurred in a municipal court, the court shall transmit the assessed monies  
 16 to the city treasurer. The city or county treasurer shall transmit the  
 17 monies received to the state treasurer.

18 Sec. 2. Section 5-396, Arizona Revised Statutes, is amended to read:

19 5-396. Aggravated operating or actual physical control of  
 20 motorized watercraft while under the influence of  
 21 intoxicating liquor or drugs; classification

22 A. A person is guilty of aggravated operating or actual physical  
 23 control of a motorized watercraft that is underway while under the influence  
 24 of intoxicating liquor or drugs if the person commits a third or subsequent  
 25 violation of section 5-395 or 5-397 or this section or is convicted of a  
 26 violation of section 5-395 or 5-397 or this section and has previously been  
 27 convicted of any combination of convictions of section 5-395 or 5-397 or this  
 28 section or acts committed in another state that if committed in this state  
 29 would be a violation of section 5-395 or 5-397 or this section within a  
 30 period of sixty months.

31 B. The dates of the commission of the offenses are the determining  
 32 factor in applying the sixty month provision provided in subsection A of this  
 33 section regardless of the sequence in which the offenses were committed. For  
 34 purposes of this section, a third or subsequent violation for which a  
 35 conviction occurs does not include a conviction for an offense arising out of  
 36 the same series of acts.

37 C. Aggravated operating or actual physical control of a motorized  
 38 watercraft that is underway while under the influence of intoxicating liquor  
 39 or drugs is a class 4 felony.

40 D. Notwithstanding section 41-1604.06, a person who is convicted under  
 41 subsection A of this section and who within a sixty month period has been  
 42 convicted of two prior violations of section 5-395 or 5-397 or this section,  
 43 or acts committed in another state that if committed in this state would be a  
 44 violation of section 5-395 or 5-397 or this section, is not eligible for

1 probation, pardon, commutation or suspension of sentence or release on any  
2 other basis until the person has served not less than four months in prison.

3 E. Notwithstanding section 41-1604.06, a person who is convicted under  
4 subsection A of this section and who within a sixty month period has been  
5 convicted of three or more prior violations of section 5-395 or 5-397 or this  
6 section, or acts committed in another state that if committed in this state  
7 would be a violation of section 5-395 or 5-397 or this section, is not  
8 eligible for probation, pardon, commutation or suspension of sentence or  
9 release on any other basis until the person has served not less than eight  
10 months in prison.

11 F. A person who is convicted of a violation of this section and who is  
12 placed on probation shall attend and complete alcohol or drug screening,  
13 counseling and education from an approved facility and, if ordered by the  
14 court, treatment from an approved facility. If the person fails to comply  
15 with this subsection, in addition to section 13-901 the court may order that  
16 the person be incarcerated as a term of probation as follows:

17 1. For a person sentenced pursuant to subsection D of this section,  
18 for an individual period of not more than four months and a total period of  
19 not more than one year.

20 2. For a person sentenced pursuant to subsection E of this section,  
21 for an individual period of not more than eight months and a total period of  
22 not more than two years.

23 G. The time that a person spends in custody pursuant to subsection D,  
24 E or F of this section shall not be counted toward the sentence imposed if  
25 the person's probation is revoked and the person is sentenced to prison  
26 following revocation of probation.

27 H. A person convicted of a violation of this section shall pay a fine  
28 of not less than seven hundred fifty dollars.

29 I. In addition to any other penalty prescribed by law, persons  
30 convicted pursuant to this section shall pay an additional assessment of one  
31 thousand five hundred dollars to be deposited by the state treasurer in the  
32 prison construction and operations fund established by section 41-1651. This  
33 assessment is not subject to any surcharge. If the conviction occurred in  
34 the superior court or a justice court, the court shall transmit the assessed  
35 monies to the county treasurer. If the conviction occurred in a municipal  
36 court, the court shall transmit the assessed monies to the city treasurer.  
37 The city or county treasurer shall transmit the monies received to the state  
38 treasurer.

39 J. In addition to any other penalty prescribed by law, persons  
40 convicted pursuant to this section shall pay an additional assessment of one  
41 thousand five hundred dollars to be deposited by the state treasurer in the  
42 ~~state general fund~~ PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION  
43 41-1722. This assessment is not subject to any surcharge. If the conviction  
44 occurred in the superior court or a justice court, the court shall transmit  
45 the assessed monies to the county treasurer. If the conviction occurred in a

1 municipal court, the court shall transmit the assessed monies to the city  
2 treasurer. The city or county treasurer shall transmit the monies received  
3 to the state treasurer.

4 Sec. 3. Section 5-397, Arizona Revised Statutes, is amended to read:

5 5-397. Operating or in actual physical control of a motorized  
6 watercraft while under the extreme influence of  
7 intoxicating liquor; trial by jury; sentencing;  
8 classification; definition

9 A. It is unlawful for a person to operate or be in actual physical  
10 control of a motorized watercraft that is underway within this state if the  
11 person has an alcohol concentration of 0.15 or more within two hours of  
12 operating or being in actual physical control of the motorized watercraft and  
13 the alcohol concentration results from alcohol consumed either before or  
14 while operating or being in actual physical control of the motorized  
15 watercraft.

16 B. A person who is convicted of a violation of this section is guilty  
17 of operating or being in actual physical control of a motorized watercraft  
18 while under the extreme influence of alcohol.

19 C. At the arraignment, the court shall inform the defendant that the  
20 defendant may request a trial by jury and that the request, if made, shall be  
21 granted.

22 D. A person who is convicted of a violation of this section:

23 1. Shall be sentenced to serve not less than thirty consecutive days  
24 in jail and is not eligible for probation or suspension of execution of  
25 sentence unless the entire sentence is served.

26 2. Shall pay a fine of not less than two hundred fifty dollars.

27 3. May be ordered by a court to perform community restitution.

28 4. Shall pay an additional assessment of one thousand dollars to be  
29 deposited by the state treasurer in the prison construction and operations  
30 fund established by section 41-1651. This assessment is not subject to any  
31 surcharge. If the conviction occurred in the superior court or a justice  
32 court, the court shall transmit the assessed monies to the county treasurer.  
33 If the conviction occurred in a municipal court, the court shall transmit the  
34 assessed monies to the city treasurer. The city or county treasurer shall  
35 transmit the monies received to the state treasurer.

36 5. Shall pay an additional assessment of one thousand dollars to be  
37 deposited by the state treasurer in the ~~state general fund~~ PUBLIC SAFETY  
38 EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This assessment is not  
39 subject to any surcharge. If the conviction occurred in the superior court  
40 or a justice court, the court shall transmit the assessed monies to the  
41 county treasurer. If the conviction occurred in a municipal court, the court  
42 shall transmit the assessed monies to the city treasurer. The city or county  
43 treasurer shall transmit the monies received to the state treasurer.

44 E. Notwithstanding subsection D, paragraph 1 of this section, at the  
45 time of sentencing the judge may suspend all but ten days of the sentence if

1 the person completes a court ordered alcohol or other drug screening,  
2 education or treatment program. If the person fails to complete the court  
3 ordered alcohol or other drug screening, education or treatment program and  
4 has not been placed on probation, the court shall issue an order to show  
5 cause to the defendant as to why the remaining jail sentence should not be  
6 served.

7 F. If within a period of sixty months a person is convicted of a  
8 second violation of this section or is convicted of a violation of this  
9 section and has previously been convicted of a violation of section 5-395 or  
10 5-396 or an act in another jurisdiction that if committed in this state would  
11 be a violation of this section or section 5-395 or 5-396, the person:

12 1. Shall be sentenced to serve not less than one hundred twenty days  
13 in jail, sixty days of which shall be served consecutively, and is not  
14 eligible for probation or suspension of execution of sentence unless the  
15 entire sentence has been served.

16 2. Shall pay a fine of not less than five hundred dollars.

17 3. May be ordered by a court to perform community restitution.

18 4. Shall pay an additional assessment of one thousand two hundred  
19 fifty dollars to be deposited by the state treasurer in the prison  
20 construction and operations fund established by section 41-1651. This  
21 assessment is not subject to any surcharge. If the conviction occurred in  
22 the superior court or a justice court, the court shall transmit the assessed  
23 monies to the county treasurer. If the conviction occurred in a municipal  
24 court, the court shall transmit the assessed monies to the city treasurer.  
25 The city or county treasurer shall transmit the monies received to the state  
26 treasurer.

27 5. Shall pay an additional assessment of one thousand two hundred  
28 fifty dollars to be deposited by the state treasurer in the ~~state general~~  
29 ~~fund~~ PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This  
30 assessment is not subject to any surcharge. If the conviction occurred in  
31 the superior court or a justice court, the court shall transmit the assessed  
32 monies to the county treasurer. If the conviction occurred in a municipal  
33 court, the court shall transmit the assessed monies to the city treasurer.  
34 The city or county treasurer shall transmit the monies received to the state  
35 treasurer.

36 G. Notwithstanding subsection F, paragraph 1 of this section, at the  
37 time of sentencing, the judge may suspend all but sixty days of the sentence  
38 if the person completes a court ordered alcohol or other drug screening,  
39 education or treatment program. If the person fails to complete the court  
40 ordered alcohol or other drug screening, education or treatment program and  
41 has not been placed on probation, the court shall issue an order to show  
42 cause as to why the remaining jail sentence should not be served.

43 H. In applying the sixty month provision of subsection F of this  
44 section, the dates of the commission of the offense shall be the determining  
45 factor, irrespective of the sequence in which the offenses were committed.

1 I. A second violation for which a conviction occurs as provided in  
2 this section shall not include a conviction for an offense arising out of the  
3 same series of acts.

4 J. A person who is convicted of a violation of this section is guilty  
5 of a class 1 misdemeanor.

6 K. For the purposes of this section, "alcohol concentration" means  
7 grams of alcohol per one hundred milliliters of blood or grams of alcohol per  
8 two hundred ten liters of breath.

9 Sec. 4. Section 28-1381, Arizona Revised Statutes, is amended to read:

10 28-1381. Driving or actual physical control while under the  
11 influence; trial by jury; presumptions; admissible  
12 evidence; sentencing; classification

13 A. It is unlawful for a person to drive or be in actual physical  
14 control of a vehicle in this state under any of the following circumstances:

15 1. While under the influence of intoxicating liquor, any drug, a vapor  
16 releasing substance containing a toxic substance or any combination of  
17 liquor, drugs or vapor releasing substances if the person is impaired to the  
18 slightest degree.

19 2. If the person has an alcohol concentration of 0.08 or more within  
20 two hours of driving or being in actual physical control of the vehicle and  
21 the alcohol concentration results from alcohol consumed either before or  
22 while driving or being in actual physical control of the vehicle.

23 3. While there is any drug defined in section 13-3401 or its  
24 metabolite in the person's body.

25 4. If the vehicle is a commercial motor vehicle that requires a person  
26 to obtain a commercial driver license as defined in section 28-3001 and the  
27 person has an alcohol concentration of 0.04 or more.

28 B. It is not a defense to a charge of a violation of subsection A,  
29 paragraph 1 of this section that the person is or has been entitled to use  
30 the drug under the laws of this state.

31 C. A person who is convicted of a violation of this section is guilty  
32 of a class 1 misdemeanor.

33 D. A person using a drug prescribed by a medical practitioner licensed  
34 pursuant to title 32, chapter 7, 11, 13 or 17 is not guilty of violating  
35 subsection A, paragraph 3 of this section.

36 E. In any prosecution for a violation of this section, the state shall  
37 allege, for the purpose of classification and sentencing pursuant to this  
38 section, all prior convictions of violating this section, section 28-1382 or  
39 section 28-1383 occurring within the past thirty-six months, unless there is  
40 an insufficient legal or factual basis to do so.

41 F. At the arraignment, the court shall inform the defendant that the  
42 defendant may request a trial by jury and that the request, if made, shall be  
43 granted.

44 G. In a trial, action or proceeding for a violation of this section or  
45 section 28-1383 other than a trial, action or proceeding involving driving or

1 being in actual physical control of a commercial vehicle, the defendant's  
2 alcohol concentration within two hours of the time of driving or being in  
3 actual physical control as shown by analysis of the defendant's blood, breath  
4 or other bodily substance gives rise to the following presumptions:

5 1. If there was at that time 0.05 or less alcohol concentration in the  
6 defendant's blood, breath or other bodily substance, it may be presumed that  
7 the defendant was not under the influence of intoxicating liquor.

8 2. If there was at that time in excess of 0.05 but less than 0.08  
9 alcohol concentration in the defendant's blood, breath or other bodily  
10 substance, that fact shall not give rise to a presumption that the defendant  
11 was or was not under the influence of intoxicating liquor, but that fact may  
12 be considered with other competent evidence in determining the guilt or  
13 innocence of the defendant.

14 3. If there was at that time 0.08 or more alcohol concentration in the  
15 defendant's blood, breath or other bodily substance, it may be presumed that  
16 the defendant was under the influence of intoxicating liquor.

17 H. Subsection G of this section does not limit the introduction of any  
18 other competent evidence bearing on the question of whether or not the  
19 defendant was under the influence of intoxicating liquor.

20 I. A person who is convicted of a violation of this section:

21 1. Shall be sentenced to serve not less than ten consecutive days in  
22 jail and is not eligible for probation or suspension of execution of sentence  
23 unless the entire sentence is served.

24 2. Shall pay a fine of not less than two hundred fifty dollars.

25 3. May be ordered by a court to perform community restitution.

26 4. Shall pay an additional assessment of five hundred dollars to be  
27 deposited by the state treasurer in the prison construction and operations  
28 fund established by section 41-1651. This assessment is not subject to any  
29 surcharge. If the conviction occurred in the superior court or a justice  
30 court, the court shall transmit the assessed monies to the county  
31 treasurer. If the conviction occurred in a municipal court, the court shall  
32 transmit the assessed monies to the city treasurer. The city or county  
33 treasurer shall transmit the monies received to the state treasurer.

34 5. Shall pay an additional assessment of five hundred dollars to be  
35 deposited by the state treasurer in the ~~state general fund~~ PUBLIC SAFETY  
36 EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This assessment is not  
37 subject to any surcharge. If the conviction occurred in the superior court  
38 or a justice court, the court shall transmit the assessed monies to the  
39 county treasurer. If the conviction occurred in a municipal court, the court  
40 shall transmit the assessed monies to the city treasurer. The city or county  
41 treasurer shall transmit the monies received to the state treasurer.

42 6. Shall be required by the department, on report of the conviction,  
43 to equip any motor vehicle the person operates with a certified ignition  
44 interlock device pursuant to section 28-3319. In addition, the court may  
45 order the person to equip any motor vehicle the person operates with a

1 certified ignition interlock device for more than twelve months beginning on  
2 the date of reinstatement of the person's driving privilege following a  
3 suspension or revocation or on the date of the department's receipt of the  
4 report of conviction, whichever occurs later. The person who operates a  
5 motor vehicle with a certified ignition interlock device under this paragraph  
6 shall comply with article 5 of this chapter.

7 J. Notwithstanding subsection I, paragraph 1 of this section, at the  
8 time of sentencing the judge may suspend all but twenty-four consecutive  
9 hours of the sentence if the person completes a court ordered alcohol or  
10 other drug screening, education or treatment program. If the person fails to  
11 complete the court ordered alcohol or other drug screening, education or  
12 treatment program and has not been placed on probation, the court shall issue  
13 an order to show cause to the defendant as to why the remaining jail sentence  
14 should not be served.

15 K. If within a period of eighty-four months a person is convicted of a  
16 second violation of this section or is convicted of a violation of this  
17 section and has previously been convicted of a violation of section 28-1382  
18 or 28-1383 or an act in another jurisdiction that if committed in this state  
19 would be a violation of this section or section 28-1382 or 28-1383, the  
20 person:

21 1. Shall be sentenced to serve not less than ninety days in jail,  
22 thirty days of which shall be served consecutively, and is not eligible for  
23 probation or suspension of execution of sentence unless the entire sentence  
24 has been served.

25 2. Shall pay a fine of not less than five hundred dollars.

26 3. Shall be ordered by a court to perform at least thirty hours of  
27 community restitution.

28 4. Shall have the person's driving privilege revoked for one year.  
29 The court shall report the conviction to the department. On receipt of the  
30 report, the department shall revoke the person's driving privilege and shall  
31 require the person to equip any motor vehicle the person operates with a  
32 certified ignition interlock device pursuant to section 28-3319. In  
33 addition, the court may order the person to equip any motor vehicle the  
34 person operates with a certified ignition interlock device for more than  
35 twelve months beginning on the date of reinstatement of the person's driving  
36 privilege following a suspension or revocation or on the date of the  
37 department's receipt of the report of conviction, whichever occurs later.  
38 The person who operates a motor vehicle with a certified ignition interlock  
39 device under this paragraph shall comply with article 5 of this chapter.

40 5. Shall pay an additional assessment of one thousand two hundred  
41 fifty dollars to be deposited by the state treasurer in the prison  
42 construction and operations fund established by section 41-1651. This  
43 assessment is not subject to any surcharge. If the conviction occurred in  
44 the superior court or a justice court, the court shall transmit the assessed  
45 monies to the county treasurer. If the conviction occurred in a municipal

1 court, the court shall transmit the assessed monies to the city treasurer.  
2 The city or county treasurer shall transmit the monies received to the state  
3 treasurer.

4 6. Shall pay an additional assessment of one thousand two hundred  
5 fifty dollars to be deposited by the state treasurer in the ~~state-general~~  
6 ~~fund~~ PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This  
7 assessment is not subject to any surcharge. If the conviction occurred in  
8 the superior court or a justice court, the court shall transmit the assessed  
9 monies to the county treasurer. If the conviction occurred in a municipal  
10 court, the court shall transmit the assessed monies to the city treasurer.  
11 The city or county treasurer shall transmit the monies received to the state  
12 treasurer.

13 L. Notwithstanding subsection K, paragraph 1 of this section, at the  
14 time of sentencing, the judge may suspend all but thirty days of the sentence  
15 if the person completes a court ordered alcohol or other drug screening,  
16 education or treatment program. If the person fails to complete the court  
17 ordered alcohol or other drug screening, education or treatment program and  
18 has not been placed on probation, the court shall issue an order to show  
19 cause as to why the remaining jail sentence should not be served.

20 M. In applying the eighty-four month provision of subsection K of this  
21 section, the dates of the commission of the offense shall be the determining  
22 factor, irrespective of the sequence in which the offenses were committed.

23 N. A second violation for which a conviction occurs as provided in  
24 this section shall not include a conviction for an offense arising out of the  
25 same series of acts.

26 Sec. 5. Section 28-1382, Arizona Revised Statutes, as amended by Laws  
27 2007, chapter 219, section 2, is amended to read:

28 28-1382. Driving or actual physical control while under the  
29 extreme influence of intoxicating liquor; trial by  
30 jury; sentencing; classification

31 A. It is unlawful for a person to drive or be in actual physical  
32 control of a vehicle in this state if the person has an alcohol concentration  
33 of 0.15 or more within two hours of driving or being in actual physical  
34 control of the vehicle and the alcohol concentration results from alcohol  
35 consumed either before or while driving or being in actual physical control  
36 of the vehicle.

37 B. A person who is convicted of a violation of this section is guilty  
38 of driving or being in actual physical control of a vehicle while under the  
39 extreme influence of intoxicating liquor.

40 C. At the arraignment, the court shall inform the defendant that the  
41 defendant may request a trial by jury and that the request, if made, shall be  
42 granted.

43 D. A person who is convicted of a violation of this section:

44 1. Except as otherwise provided in this paragraph, shall be sentenced  
45 to serve not less than thirty consecutive days in jail and is not eligible

1 for probation or suspension of execution of sentence unless the entire  
2 sentence is served. A person who has an alcohol concentration of 0.20 or  
3 more shall be sentenced to serve not less than forty-five consecutive days in  
4 jail and is not eligible for probation or suspension of execution of sentence  
5 unless the entire sentence is served.

6 2. Shall pay a fine of not less than two hundred fifty dollars, except  
7 that a person who has an alcohol concentration of 0.20 or more shall pay a  
8 fine of not less than five hundred dollars. The fine prescribed in this  
9 paragraph and any assessments, restitution and incarceration costs shall be  
10 paid before the assessment prescribed in paragraph 3 of this subsection.

11 3. Shall pay an additional assessment of two hundred fifty dollars. If  
12 the conviction occurred in the superior court or a justice court, the court  
13 shall transmit the monies received pursuant to this paragraph to the county  
14 treasurer. If the conviction occurred in a municipal court, the court shall  
15 transmit the monies received pursuant to this paragraph to the city  
16 treasurer. The city or county treasurer shall transmit the monies received  
17 to the state treasurer. The state treasurer shall deposit the monies  
18 received in the driving under the influence abatement fund established by  
19 section 28-1304.

20 4. May be ordered by a court to perform community restitution.

21 5. Shall be required by the department, on receipt of the report of  
22 conviction, to equip any motor vehicle the person operates with a certified  
23 ignition interlock device pursuant to section 28-3319. In addition, the  
24 court may order the person to equip any motor vehicle the person operates  
25 with a certified ignition interlock device for more than twelve months  
26 beginning on the date of reinstatement of the person's driving privilege  
27 following a suspension or revocation or on the date of the department's  
28 receipt of the report of conviction, whichever occurs later. The person who  
29 operates a motor vehicle with a certified ignition interlock device under  
30 this paragraph shall comply with article 5 of this chapter.

31 6. Shall pay an additional assessment of one thousand dollars to be  
32 deposited by the state treasurer in the prison construction and operations  
33 fund established by section 41-1651. This assessment is not subject to any  
34 surcharge. If the conviction occurred in the superior court or a justice  
35 court, the court shall transmit the assessed monies to the county treasurer.  
36 If the conviction occurred in a municipal court, the court shall transmit the  
37 assessed monies to the city treasurer. The city or county treasurer shall  
38 transmit the monies received to the state treasurer.

39 7. Shall pay an additional assessment of one thousand dollars to be  
40 deposited by the state treasurer in the ~~state general fund~~ PUBLIC SAFETY  
41 EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This assessment is not  
42 subject to any surcharge. If the conviction occurred in the superior court  
43 or a justice court, the court shall transmit the assessed monies to the  
44 county treasurer. If the conviction occurred in a municipal court, the court

1 shall transmit the assessed monies to the city treasurer. The city or county  
2 treasurer shall transmit the monies received to the state treasurer.

3 E. ~~Notwithstanding~~ FOR A CONVICTION PURSUANT TO subsection  
4 D, ~~paragraph 1~~ of this section, at the time of sentencing ~~if the person has~~  
5 ~~an alcohol concentration of less than 0.20~~, the judge may ~~suspend all but ten~~  
6 ~~days of the sentence if the person completes a court ordered alcohol or other~~  
7 ~~drug screening, education or treatment program. If the person fails to~~  
8 ~~complete the court ordered alcohol or other drug screening, education or~~  
9 ~~treatment program and has not been placed on probation, the court shall issue~~  
10 ~~an order to show cause to the defendant as to why the remaining jail sentence~~  
11 ~~should not be served~~ ORDER THE PERSON TO NOT CONSUME ALCOHOL FOR A PERIOD OF  
12 THIRTY DAYS OR MORE AS DEMONSTRATED THROUGH CONTINUOUS ALCOHOL MONITORING OR  
13 TWICE DAILY ALCOHOL TESTING. THE COURT MAY EXTEND THE PERIOD OF CONTINUOUS  
14 ALCOHOL MONITORING.

15 F. If within a period of eighty-four months a person is convicted of a  
16 second violation of this section or is convicted of a violation of this  
17 section and has previously been convicted of a violation of section 28-1381  
18 or 28-1383 or an act in another jurisdiction that if committed in this state  
19 would be a violation of this section or section 28-1381 or 28-1383, the  
20 person:

21 1. Except as otherwise provided in this paragraph, shall be sentenced  
22 to serve not less than one hundred twenty days in jail, sixty days of which  
23 shall be served consecutively, and is not eligible for probation or  
24 suspension of execution of sentence unless the entire sentence has been  
25 served. A person who has an alcohol concentration of 0.20 or more shall be  
26 sentenced to serve not less than one hundred eighty days in jail, ninety of  
27 which shall be served consecutively, and is not eligible for probation or  
28 suspension of execution of sentence unless the entire sentence has been  
29 served.

30 2. Shall pay a fine of not less than five hundred dollars, except that  
31 a person who has an alcohol concentration of 0.20 or more shall pay a fine of  
32 not less than one thousand dollars. The fine prescribed in this paragraph  
33 and any assessments, restitution and incarceration costs shall be paid before  
34 the assessment prescribed in paragraph 3 of this subsection.

35 3. Shall pay an additional assessment of two hundred fifty dollars.  
36 If the conviction occurred in the superior court or a justice court, the  
37 court shall transmit the monies received pursuant to this paragraph to the  
38 county treasurer. If the conviction occurred in a municipal court, the court  
39 shall transmit the monies received pursuant to this paragraph to the city  
40 treasurer. The city or county treasurer shall transmit the monies received  
41 to the state treasurer. The state treasurer shall deposit the monies  
42 received in the driving under the influence abatement fund established by  
43 section 28-1304.

44 4. Shall be ordered by a court to perform at least thirty hours of  
45 community restitution.

1           5. Shall have the person's driving privilege revoked for at least one  
2 year. The court shall report the conviction to the department. On receipt  
3 of the report, the department shall revoke the person's driving privilege and  
4 shall require the person to equip any motor vehicle the person operates with  
5 a certified ignition interlock device pursuant to section 28-3319. In  
6 addition, the court may order the person to equip any motor vehicle the  
7 person operates with a certified ignition interlock device for more than  
8 twelve months beginning on the date of reinstatement of the person's driving  
9 privilege following a suspension or revocation or on the date of the  
10 department's receipt of the report of conviction, whichever is later. The  
11 person who operates a motor vehicle with a certified ignition interlock  
12 device under this paragraph shall comply with article 5 of this chapter.

13           6. Shall pay an additional assessment of one thousand two hundred  
14 fifty dollars to be deposited by the state treasurer in the prison  
15 construction and operations fund established by section 41-1651. This  
16 assessment is not subject to any surcharge. If the conviction occurred in  
17 the superior court or a justice court, the court shall transmit the assessed  
18 monies to the county treasurer. If the conviction occurred in a municipal  
19 court, the court shall transmit the assessed monies to the city treasurer.  
20 The city or county treasurer shall transmit the monies received to the state  
21 treasurer.

22           7. Shall pay an additional assessment of one thousand two hundred  
23 fifty dollars to be deposited by the state treasurer in the ~~state general~~  
24 ~~fund~~ PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This  
25 assessment is not subject to any surcharge. If the conviction occurred in  
26 the superior court or a justice court, the court shall transmit the assessed  
27 monies to the county treasurer. If the conviction occurred in a municipal  
28 court, the court shall transmit the assessed monies to the city treasurer.  
29 The city or county treasurer shall transmit the monies received to the state  
30 treasurer.

31           ~~G. Notwithstanding subsection F, paragraph 1 of this section, at the~~  
32 ~~time of sentencing, if the person has an alcohol concentration of less than~~  
33 ~~0.20, the judge may suspend all but sixty days of the sentence if the person~~  
34 ~~completes a court ordered alcohol or other drug screening, education or~~  
35 ~~treatment program. If the person fails to complete the court ordered alcohol~~  
36 ~~or other drug screening, education or treatment program and has not been~~  
37 ~~placed on probation, the court shall issue an order to show cause as to why~~  
38 ~~the remaining jail sentence should not be served.~~

39           G. FOR A CONVICTION PURSUANT TO SUBSECTION F OF THIS SECTION, AT THE  
40 TIME OF SENTENCING, THE JUDGE MAY ORDER THE PERSON TO NOT CONSUME ALCOHOL FOR  
41 A PERIOD OF NINETY DAYS OR MORE AS DEMONSTRATED THROUGH CONTINUOUS ALCOHOL  
42 MONITORING OR A MINIMUM OF TWICE DAILY ALCOHOL TESTING. THE COURT MAY EXTEND  
43 THE PERIOD OF CONTINUOUS ALCOHOL MONITORING.

1 H. In applying the eighty-four month provision of subsection F of this  
2 section, the dates of the commission of the offense shall be the determining  
3 factor, irrespective of the sequence in which the offenses were committed.

4 I. A second violation for which a conviction occurs as provided in  
5 this section shall not include a conviction for an offense arising out of the  
6 same series of acts.

7 J. A person who is convicted of a violation of this section is guilty  
8 of a class 1 misdemeanor.

9 Sec. 6. Repeal

10 Section 28-1382, Arizona Revised Statutes, as amended by Laws 2007,  
11 chapter 195, section 3, is repealed.

12 Sec. 7. Section 28-1383, Arizona Revised Statutes, is amended to read:  
13 28-1383. Aggravated driving or actual physical control while  
14 under the influence; violation; classification;  
15 definition

16 A. A person is guilty of aggravated driving or actual physical control  
17 while under the influence of intoxicating liquor or drugs if the person does  
18 any of the following:

19 1. Commits a violation of section 28-1381, section 28-1382 or this  
20 section while the person's driver license or privilege to drive is suspended,  
21 canceled, revoked or refused or while a restriction is placed on the person's  
22 driver license or privilege to drive as a result of violating section 28-1381  
23 or 28-1382 or under section 28-1385.

24 2. Within a period of eighty-four months commits a third or subsequent  
25 violation of section 28-1381, section 28-1382 or this section or is convicted  
26 of a violation of section 28-1381, section 28-1382 or this section and has  
27 previously been convicted of any combination of convictions of section  
28 28-1381, section 28-1382 or this section or acts in another jurisdiction that  
29 if committed in this state would be a violation of section 28-1381, section  
30 28-1382 or this section.

31 3. While a person under fifteen years of age is in the vehicle,  
32 commits a violation of either:

33 (a) Section 28-1381.

34 (b) Section 28-1382.

35 4. While the person is ordered by the court or required pursuant to  
36 section 28-3319 by the department to equip any motor vehicle the person  
37 operates with a certified ignition interlock device, does either of the  
38 following:

39 (a) While under arrest refuses to submit to any test chosen by a law  
40 enforcement officer pursuant to section 28-1321, subsection A.

41 (b) Commits a violation of section 28-1381, section 28-1382 or this  
42 section.

43 B. The dates of the commission of the offenses are the determining  
44 factor in applying the eighty-four month provision provided in subsection A,  
45 paragraph 2 of this section regardless of the sequence in which the offenses

1 were committed. For the purposes of this section, a third or subsequent  
2 violation for which a conviction occurs does not include a conviction for an  
3 offense arising out of the same series of acts. The time that a probationer  
4 is found to be on absconder status or the time that a person is incarcerated  
5 in any state, federal, county or city jail or correctional facility is  
6 excluded when determining the eighty-four month period provided in subsection  
7 A, paragraph 2 and subsection E of this section.

8 C. The notice to a person of the suspension, cancellation, revocation  
9 or refusal of a driver license or privilege to drive is effective as provided  
10 in section 28-3318 or pursuant to the laws of the state issuing the license.

11 D. A person is not eligible for probation, pardon, commutation or  
12 suspension of sentence or release on any other basis until the person has  
13 served not less than four months in prison if the person is convicted under  
14 either of the following:

15 1. Subsection A, paragraph 1 of this section.

16 2. Subsection A, paragraph 2 of this section and within an eighty-four  
17 month period has been convicted of two prior violations of section 28-1381,  
18 section 28-1382 or this section, or any combination of those sections, or  
19 acts in another jurisdiction that if committed in this state would be a  
20 violation of section 28-1381, section 28-1382 or this section.

21 E. A person who is convicted under subsection A, paragraph 2 of this  
22 section and who within an eighty-four month period has been convicted of  
23 three or more prior violations of section 28-1381, section 28-1382 or this  
24 section, or any combination of those sections, or acts in another  
25 jurisdiction that if committed in this state would be a violation of section  
26 28-1381, section 28-1382 or this section is not eligible for probation,  
27 pardon, commutation or suspension of sentence or release on any other basis  
28 until the person has served not less than eight months in prison.

29 F. A person who is convicted under subsection A, paragraph 3,  
30 subdivision (a) of this section shall serve at least the minimum term of  
31 incarceration required pursuant to section 28-1381.

32 G. A person who is convicted under subsection A, paragraph 3,  
33 subdivision (b) of this section shall serve at least the minimum term of  
34 incarceration required pursuant to section 28-1382.

35 H. A person who is convicted of a violation of this section shall  
36 attend and complete alcohol or other drug screening, education or treatment  
37 from an approved facility. If the person fails to comply with this  
38 subsection and is placed on probation, in addition to the provisions of  
39 section 13-901 the court may order that the person be incarcerated as a term  
40 of probation as follows:

41 1. For a person sentenced pursuant to subsection D of this section,  
42 for an individual period of not more than four months and a total period of  
43 not more than one year.

1           2. For a person sentenced pursuant to subsection E of this section,  
2 for an individual period of not more than eight months and a total period of  
3 not more than two years.

4           I. The time that a person spends in custody pursuant to subsection H  
5 of this section shall not be counted towards the sentence imposed if the  
6 person's probation is revoked and the person is sentenced to prison after  
7 revocation of probation.

8           J. On a conviction for a violation of this section, the court:

9           1. Shall report the conviction to the department. On receipt of the  
10 report, the department shall revoke the driving privilege of the person. The  
11 department shall not issue the person a new driver license within three years  
12 of the date of the conviction and, for a conviction of a violation of  
13 subsection A, paragraph 1, 2 or 4 or paragraph 3, subdivision (b) of this  
14 section, shall require the person to equip any motor vehicle the person  
15 operates with a certified ignition interlock device pursuant to section  
16 28-3319. In addition, the court may order the person to equip any motor  
17 vehicle the person operates with a certified ignition interlock device for  
18 more than twelve months beginning on the date of reinstatement of the  
19 person's driving privilege following a suspension or revocation or on the  
20 date of the department's receipt of the report of conviction, whichever  
21 occurs later. The person who operates a motor vehicle with a certified  
22 ignition interlock device under this paragraph shall comply with article 5 of  
23 this chapter.

24           2. In addition to any other penalty prescribed by law, shall order the  
25 person to pay an additional assessment of two hundred fifty dollars. If the  
26 conviction occurred in the superior court or a justice court, the court shall  
27 transmit the monies received pursuant to this paragraph to the county  
28 treasurer. If the conviction occurred in a municipal court, the court shall  
29 transmit the monies received pursuant to this paragraph to the city  
30 treasurer. The city or county treasurer shall transmit the monies received  
31 to the state treasurer. The state treasurer shall deposit the monies  
32 received in the driving under the influence abatement fund established by  
33 section 28-1304. Any fine imposed for a violation of this section and any  
34 assessments, restitution and incarceration costs shall be paid before the  
35 assessment prescribed in this paragraph.

36           3. Shall order the person to pay a fine of not less than seven hundred  
37 fifty dollars.

38           4. In addition to any other penalty prescribed by law, shall order the  
39 person to pay an additional assessment of one thousand five hundred dollars  
40 to be deposited by the state treasurer in the prison construction and  
41 operations fund established by section 41-1651. This assessment is not  
42 subject to any surcharge. If the conviction occurred in the superior court  
43 or a justice court, the court shall transmit the assessed monies to the  
44 county treasurer. If the conviction occurred in a municipal court, the court

1 shall transmit the assessed monies to the city treasurer. The city or county  
2 treasurer shall transmit the monies received to the state treasurer.

3 5. In addition to any other penalty prescribed by law, shall order the  
4 person to pay an additional assessment of one thousand five hundred dollars  
5 to be deposited by the state treasurer in the ~~state general fund~~ PUBLIC  
6 SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This assessment is not  
7 subject to any surcharge. If the conviction occurred in the superior court  
8 or a justice court, the court shall transmit the assessed monies to the  
9 county treasurer. If the conviction occurred in a municipal court, the court  
10 shall transmit the assessed monies to the city treasurer. The city or county  
11 treasurer shall transmit the monies received to the state treasurer.

12 K. After completing the period of suspension required by section  
13 28-1385, a person whose driving privilege is revoked for a violation of  
14 subsection A, paragraph 3 of this section may apply to the department for a  
15 special ignition interlock restricted driver license pursuant to section  
16 28-1401.

17 L. Aggravated driving or actual physical control while under the  
18 influence of intoxicating liquor or drugs committed under:

19 1. Subsection A, paragraph 1 or 2 or paragraph 4, subdivision (b) of  
20 this section is a class 4 felony.

21 2. Subsection A, paragraph 3 or paragraph 4, subdivision (a) of this  
22 section is a class 6 felony.

23 M. For the purposes of this section, "suspension, cancellation,  
24 revocation or refusal" means any suspension, cancellation, revocation or  
25 refusal.

26 Sec. 8. Section 28-8284, Arizona Revised Statutes, is amended to read:  
27 28-8284. Violation: classification

28 A. A person who is convicted of a violation of section 28-8282 is  
29 guilty of a class 1 misdemeanor and shall be sentenced to serve not less than  
30 twenty-four consecutive hours in jail.

31 B. The court shall order the person to pay a fine of not less than two  
32 hundred fifty dollars and may order the person to perform not less than eight  
33 or more than twenty-four hours of community restitution.

34 C. A court shall not grant probation to or suspend any part or all of  
35 the imposition or execution of a sentence required by this section, except on  
36 the condition that the person serve not less than twenty-four consecutive  
37 hours in jail and pay a fine of not less than two hundred fifty dollars.

38 D. The court:

39 1. Shall not excuse an offender from spending twenty-four consecutive  
40 hours in jail.

41 2. May require the offender to attend traffic safety or alcohol abuse  
42 classes at the offender's expense.

43 3. If in the court's opinion the offender has the problem of habitual  
44 abuse of alcohol or drugs, shall require the offender to obtain treatment  
45 under its supervision.

1           4. Shall order the offender to pay an additional assessment of five  
2 hundred dollars to be deposited by the state treasurer in the prison  
3 construction and operations fund established by section 41-1651. This  
4 assessment is not subject to any surcharge. If the conviction occurred in  
5 the superior court or a justice court, the court shall transmit the assessed  
6 monies to the county treasurer. If the conviction occurred in a municipal  
7 court, the court shall transmit the assessed monies to the city treasurer.  
8 The city or county treasurer shall transmit the monies received to the state  
9 treasurer.

10           5. Shall order the offender to pay an additional assessment of five  
11 hundred dollars to be deposited by the state treasurer in the ~~state general~~  
12 ~~fund~~ PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This  
13 assessment is not subject to any surcharge. If the conviction occurred in  
14 the superior court or a justice court, the court shall transmit the assessed  
15 monies to the county treasurer. If the conviction occurred in a municipal  
16 court, the court shall transmit the assessed monies to the city treasurer.  
17 The city or county treasurer shall transmit the monies received to the state  
18 treasurer.

19           E. Notwithstanding subsection A of this section, the judge may  
20 sentence a person pursuant to section 28-8286 instead of pursuant to  
21 subsection A of this section, if all of the following conditions are met:

- 22           1. The person is convicted of a violation of section 28-8282.
- 23           2. The prosecutor alleges the provisions of this subsection.
- 24           3. The court finds that alternative sentencing will serve the best  
25 interests of this state and that the person:

26           (a) Has not been convicted of one or more violations of section  
27 28-8282 within sixty months of the date of commission of the acts out of  
28 which the charges arose. The dates of commission of the offense are the  
29 determining factor in applying this paragraph.

30           (b) Was not flying with 0.08 per cent or more by weight of alcohol in  
31 the person's blood.

32           (c) Did not cause serious physical injury as defined in section 13-105  
33 to another person during the same event or course of conduct that resulted in  
34 the conviction for which the person is to be sentenced.

35           Sec. 9. Section 28-8286, Arizona Revised Statutes, is amended to read:  
36           28-8286. Alternative sentencing

37           If pursuant to section 28-8284, subsection E a court orders a person  
38 convicted of a violation of section 28-8282 to be sentenced pursuant to this  
39 section, the court:

- 40           1. Shall order the person to pay a fine of not less than two hundred  
41 fifty dollars.
- 42           2. May order the person to perform not less than eight or more than  
43 twenty-four hours of community restitution.
- 44           3. May require the person to attend traffic safety or alcohol abuse  
45 classes at the person's expense.

1           4. If in the court's opinion the person has the problem of habitual  
2 abuse of alcohol or drugs, shall require the person to obtain treatment under  
3 its supervision.

4           5. Shall not suspend any part or all of the imposition or execution of  
5 any sentence required by this section.

6           6. Shall order the person to pay an additional assessment of five  
7 hundred dollars to be deposited by the state treasurer in the prison  
8 construction and operations fund established by section 41-1651. This  
9 assessment is not subject to any surcharge. If the conviction occurred in  
10 the superior court or a justice court, the court shall transmit the assessed  
11 monies to the county treasurer. If the conviction occurred in a municipal  
12 court, the court shall transmit the assessed monies to the city  
13 treasurer. The city or county treasurer shall transmit the monies received  
14 to the state treasurer.

15           7. Shall order the person to pay an additional assessment of five  
16 hundred dollars to be deposited by the state treasurer in the ~~state general~~  
17 ~~fund~~ PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This  
18 assessment is not subject to any surcharge. If the conviction occurred in  
19 the superior court or a justice court, the court shall transmit the assessed  
20 monies to the county treasurer. If the conviction occurred in a municipal  
21 court, the court shall transmit the assessed monies to the city treasurer.  
22 The city or county treasurer shall transmit the monies received to the state  
23 treasurer.

24           Sec. 10. Section 28-8287, Arizona Revised Statutes, is amended to  
25 read:

26           28-8287. Second offense

27           A. If a person is convicted of a second violation of section 28-8282  
28 or is convicted of a violation of section 28-8282 and has previously been  
29 convicted of an act in another state that if committed in this state would be  
30 a violation of section 28-8282 within a period of sixty months:

31           1. The person is guilty of a class 1 misdemeanor.

32           2. The person shall be sentenced to serve not less than sixty days in  
33 jail.

34           3. The court shall order the person to pay a fine of not less than  
35 five hundred dollars.

36           4. The court shall not grant probation to or suspend any part or all  
37 of the imposition or execution of any sentence required by this subsection,  
38 except on the condition that the person serve not less than sixty days in  
39 jail and pay a fine of not less than five hundred dollars.

40           5. If in the court's opinion the offender has the problem of habitual  
41 abuse of alcohol or drugs, the court shall require the person to obtain  
42 treatment under its supervision.

43           6. The person shall pay an additional assessment of one thousand two  
44 hundred fifty dollars to be deposited by the state treasurer in the prison  
45 construction and operations fund established by section 41-1651. This

1 assessment is not subject to any surcharge. If the conviction occurred in  
2 the superior court or a justice court, the court shall transmit the assessed  
3 monies to the county treasurer. If the conviction occurred in a municipal  
4 court, the court shall transmit the assessed monies to the city  
5 treasurer. The city or county treasurer shall transmit the monies received  
6 to the state treasurer.

7 7. The person shall pay an additional assessment of one thousand two  
8 hundred fifty dollars to be deposited by the state treasurer in the ~~state~~  
9 ~~general fund~~ PUBLIC SAFETY EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722.  
10 This assessment is not subject to any surcharge. If the conviction occurred  
11 in the superior court or a justice court, the court shall transmit the  
12 assessed monies to the county treasurer. If the conviction occurred in a  
13 municipal court, the court shall transmit the assessed monies to the city  
14 treasurer. The city or county treasurer shall transmit the monies received  
15 to the state treasurer.

16 B. The dates of the commission of the offense are the determining  
17 factor in applying this section.

18 C. A second violation for which a conviction occurs as provided in  
19 this section shall not include a conviction for an offense arising out of the  
20 same series of acts.

21 Sec. 11. Section 28-8288, Arizona Revised Statutes, is amended to  
22 read:

23 28-8288. Third or subsequent offense

24 A. If a person is convicted of a third or subsequent violation of  
25 section 28-8282 or is convicted of a violation of section 28-8282 and has  
26 previously been convicted of any combination of convictions of section  
27 28-8282 or acts committed in another state that if committed in this state  
28 would be a violation of section 28-8282 within a period of sixty months:

29 1. The person is guilty of a class 5 felony.

30 2. The person is not eligible for probation, pardon, suspension of  
31 sentence or release on any basis except as specifically authorized by section  
32 31-233, subsection A or B until the person has served not less than six  
33 months in prison.

34 3. The court shall not suspend the imposition of a prison sentence.

35 4. If in the court's opinion the person has the problem of habitual  
36 abuse of alcohol or drugs, the court shall require the person to obtain  
37 treatment under its supervision.

38 5. In addition to any other penalty prescribed by law, the person  
39 shall pay an additional assessment of one thousand five hundred dollars to be  
40 deposited by the state treasurer in the prison construction and operations  
41 fund established by section 41-1651. This assessment is not subject to any  
42 surcharge. If the conviction occurred in the superior court or a justice  
43 court, the court shall transmit the assessed monies to the county treasurer.  
44 If the conviction occurred in a municipal court, the court shall transmit the

1 assessed monies to the city treasurer. The city or county treasurer shall  
2 transmit the monies received to the state treasurer.

3 6. In addition to any other penalty prescribed by law, the person  
4 shall pay an additional assessment of one thousand five hundred dollars to be  
5 deposited by the state treasurer in the ~~state general fund~~ PUBLIC SAFETY  
6 EQUIPMENT FUND ESTABLISHED BY SECTION 41-1722. This assessment is not  
7 subject to any surcharge. If the conviction occurred in the superior court  
8 or a justice court, the court shall transmit the assessed monies to the  
9 county treasurer. If the conviction occurred in a municipal court, the court  
10 shall transmit the assessed monies to the city treasurer. The city or county  
11 treasurer shall transmit the monies received to the state treasurer.

12 B. The dates of the commission of the offense are the determining  
13 factor in applying this section.

14 C. A third or subsequent violation for which a conviction occurs as  
15 provided in this section shall not include a conviction for an offense  
16 arising out of the same series of acts.

17 Sec. 12. Title 41, chapter 12, article 2, Arizona Revised Statutes, is  
18 amended by adding section 41-1722, to read:

19 41-1722. Public safety equipment fund; distribution

20 THE PUBLIC SAFETY EQUIPMENT FUND IS ESTABLISHED CONSISTING OF MONIES  
21 DEPOSITED IN THE FUND PURSUANT TO SECTIONS 5-395.01, 5-396, 5-397, 28-1381,  
22 28-1382, 28-1383, 28-8284, 28-8286, 28-8287 AND 28-8288. THE DEPARTMENT  
23 SHALL ADMINISTER THE FUND. MONIES IN THE FUND SHALL BE DISTRIBUTED AS  
24 FOLLOWS:

25 1. THE FIRST THREE MILLION DOLLARS RECEIVED EACH FISCAL YEAR AS A  
26 CONTINUING APPROPRIATION TO THE DEPARTMENT FOR PROTECTIVE ARMOR, ELECTRONIC  
27 STUN DEVICES AND OTHER SAFETY EQUIPMENT. MONIES APPROPRIATED PURSUANT TO  
28 THIS PARAGRAPH ARE EXEMPT FROM THE PROVISIONS OF SECTION 35-190 RELATING TO  
29 LAPSING OF APPROPRIATIONS.

30 2. ALL OTHER MONIES EACH FISCAL YEAR SHALL BE DEPOSITED IN THE STATE  
31 GENERAL FUND.

32 Sec. 13. Appropriation; fire suppression kits

33 A. Notwithstanding section 41-1722, paragraph 1, Arizona Revised  
34 Statutes, as added by this act, the sum of \$500,000 is appropriated from the  
35 first monies received by the public safety equipment fund in fiscal year  
36 2008-2009 to the Arizona criminal justice commission for distribution to  
37 state and local law enforcement and other governmental entities in this state  
38 for active or passive fire suppression kits for Ford Crown Victoria vehicles  
39 to aid in the prevention of fires resulting from rear end collisions. The  
40 commission shall distribute the monies on a first-come first served basis  
41 with a maximum of \$1,000 per vehicle.

42 B. A person or entity that sells or offers to sell an active or  
43 passive fire suppression for use pursuant to this section shall comply with  
44 the testing requirements of section 44-1224, Arizona Revised Statutes.

1           C. The division of occupational safety and health within the  
2 industrial commission of Arizona shall monitor the installation of the fire  
3 suppression kits.

4           D. After distribution of the monies in subsection A of this section by  
5 the Arizona criminal justice commission, the department of public safety may  
6 use the remainder of the \$3,000,000 appropriated pursuant to section 41-1722,  
7 paragraph 1, Arizona Revised Statutes, as added by this act, in fiscal year  
8 2008-2009, for the purposes provided in that section.